

Attorney Docket No.: CING-121
Appl. Ser. No.: 10/634,977

PATENT

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated June 15, 2006 and, thus, the application is in condition for allowance.

By this reply, claims 2 and 15 are amended. Claims 1-17 remain pending. Of these, claim 1, 6, 9, 14, and 15 are independent. Claim 2 was amended for purpose of clarity. The amendment does not change the scope of claim 2 in any manner. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claims 1-4, 6-12, and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kiukkonen et al. (USPGPUB 2004/0203466). It is asserted that Kiukkonen discloses a method with all of the limitations of the present invention as recited in the claims. Applicant respectfully traverses.

With respect to claim 1, Kiukkonen fails to teach a method as recited in the pending claims. For example, Kiukkonen fails to disclose a method including, for example, a step of calculating a bit-error rate by comparing the receiver output to the predetermined message or the step of determining receiver performance by evaluating the bit-error rate, the predetermined attenuation, and the received message power. The Office Action asserts that Kiukkonen teaches the calculating step with reference to paragraphs 26-28. However, Kiukkonen does not disclose calculating a bit-error rate from a *predetermined* message, a message generated for the purposes of testing. Rather, Kiukkonen discloses, at best, calculating a bit-error rate from existing traffic. See Kiukkonen, paragraph 22. In fact, Kiukkonen states that having no separate means for generating test signals is an advantage of his invention. See Kiukkonen, paragraph 22. Since Kiukkonen discloses an existing message, not a predetermined message, Kiukkonen cannot disclose calculating a bit error-rate from a predetermined message as recited in claim 1.

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In addition, Kiukkonen fails to disclose a method including, for example, the step of determining receiver performance by evaluating the bit-error rate, the predetermined attenuation, and the received message power. The Examiner cites paragraphs 26-28 and 34-35 as disclosing this step. However, Kiukkonen does not disclose receiver performance by evaluating all three of bit-error rate, predetermined attenuation, and received message power. Kiukkonen discloses, at best, attenuating the signal so that it does not disturb other traffic. See Kiukkonen, paragraph 35. However, Kiukkonen does not disclose using this attenuation as part of evaluating performance. Nor does Kiukkonen disclose using the power level to evaluate performance. To the extent Kiukkonen discusses the power level, it is as part of a discussion about avoiding a signal power level that might disturb existing traffic, not as part of evaluating performance. See Kiukkonen, paragraph 35. Thus, Kiukkonen does not disclose the step of determining receiver performance by evaluating the bit-error rate, the predetermined attenuation, and the received message power. Since Kiukkonen does not teach all the steps of claim 1, Kiukkonen cannot anticipate claim 1.

With respect to claims 2, 3, and 4, these claims depend ultimately from claim 1. Since Kiukkonen does not disclose the method recited in claim 1, Kiukkonen also fails to disclose all of the limitations of claims 2, 3, and 4.

With respect to claim 6, Kiukkonen fails to a network as recited in this claim. For example, Kiukkonen fails to disclose a network that includes, for example, a radio base station receiver system that calculates a bit-error rate of the predetermined message or that determines receiver performance quality as a function of the bit-error rate, measured power, and predetermined attenuation. Kiukkonen fails to disclose these this network for the reasons set forth above in the discussion of claim 1.

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With respect to claims 7 and 8, these claims depend ultimately on claim 6. Since Kiukkonen does not disclose the network of claim 6, Kiukkonen cannot disclose all of the limitations of claims 7 and 8.

Kiukkonen fails to disclose a computer readable medium as recited in independent claim 9. For example, Kiukkonen fails to teach a computer readable medium having, for example, a bit-error detector routine that compares a received message to a predetermined message to determine errors in the receiver, a communications routine for requesting measured power of received signals having the predetermined message, and an evaluation routine for comparing the measured power, bit-error rate, and attenuation to determine receiver performance. Kiukkonen fails to teach the bit-error detector routine and the evaluation routine for the reasons set forth above in the discussion of claim 1.

As to the communication routine, the Office Action cites Kiukkonen, paragraph 26, as disclosing this routine. However, in paragraph 26, Kiukkonen discloses estimating the power level of the receiving signal. Estimating the power level is not measuring the power level, as there would be no need to estimate a power level if it could be measured. Thus, Kiukkonen does not teach the communication routine as recited in claim 9. Since Kiukkonen does not teach a computer readable medium as recited in claim 9, Kiukkonen cannot anticipate claim 9.

As to claims 10, 11, and 12, these claims depend on claim 9. Since Kiukkonen does not disclose a computer readable medium as recited in claim 9, Kiukkonen cannot teach all of the limitations of claims 10, 11, and 12.

As to claim 14, Kiukkonen fails to disclose a cellular communication network as recited in claim 14. For example, Kiukkonen fails to disclose a network having, for example, the ability for calculating the bit-error rate of the received message at the network element or evaluating

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performance of the base station receiver by analysis of the bit-error rate in a plurality of received messages as a function of attenuation and received message power for the reasons set forth above in the discussion of claim 1.

In the outstanding Office Action, claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Larsen (USPN 6,965,568) in view of Kiukkonen. It is asserted that Larsen discloses a receiver with all of the limitations of the present invention as recited in the claims, but for a receiver test unit. It is alleged that Kiukkonen does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Larsen nor Kiukkonen, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. For example, Larsen fails to disclose that the controller is programmable to transmit a predetermined test message. Larsen broadly discloses a communication system. Larsen does not disclose testing of any kind, including transmitting a test message.

In addition, even if Larsen discloses the limitations as alleged by the Examiner, *arguendo*, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Larsen and Kiukkonen to arrive at the invention as claimed because Kiukkonen teaches away from such a combination. Kiukkonen discloses that it is advantageous not to generate a predetermined test message. See Kiukkonen, paragraph 11. However, as claimed in claim 15, the present invention discloses transmitting a predetermined message. Since Kiukkonen teaches away from transmitting a predetermined message, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Larsen and Kiukkonen to obtain the present invention as recited in claim 15.

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With respect to claims 16 and 17, these claims depend on claim 15. Since the combination of Larsen and Kiukkonen does not teach the receiver test unit of claim 15, the combination also fails to disclose the limitations of claims 16 and 17. In addition, since it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine the disclosures of Larsen and Kiukkonen to arrive at all the limitations of claim 15, it also would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings.

In the outstanding Office Action, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiukkonen in view of Ostman (USPN 6,529,494). It is asserted that Kiukkonen discloses a method with all of the limitations of the present invention as recited in the claims, but for the step of increasing the magnitude of the predetermined attenuation until the communications link is dropped. It is alleged that Ostman does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Ostman nor Kiukkonen, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the claim 5. For example, Kiukkonen fails to teach a method as recited in independent claim 1 from which claim 5 depends. In addition, Ostman fails to teach, for example, that the magnitude of the attenuation is increased until the communications link is dropped. Ostman discloses, at best, attenuating a signal to resemble a fading event. See Ostman, col. 5, lines 20 – 27. However, this attenuation is such that the mobile station can handle. Indeed, Ostman specifically discloses that the attenuation does not decrease the signal strength to below the minimum required level. Ostman, col. 5, lines 25 – 30. In contrast, claim 5 as presented herein requires that the attenuation will, in

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the final iteration, drop to a level at which the communication is dropped. Since Ostman specifically discloses that the attenuation will not result in a signal loss, Ostman cannot teach this limitation recited in claim 5. In addition, it would not have been obvious for one of ordinary skill in the art to combine Ostman with Kiukkonen because Kiukkonen teaches away from such a combination, for the reasons set forth above with respect to the discussion of claim 15.

In the outstanding Office Action, claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiukkonen in view of Laham et al. (USPN 6,507,737). It is asserted that Kiukkonen discloses a computer readable medium with all of the limitations of the present invention as recited in the claims, but for the evaluation routine medium resides in a MSC test unit. It is alleged that Laham does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Laham nor Kiukkonen, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the claim 13. For example, Kiukkonen fails to disclose a computer readable medium as recited in independent claim 9, from which claim 13 depends. Kiukkonen therefore does not disclose all of the limitations of claim 13. In addition, Laham fails to disclose that the evaluation routine medium resides in a MSC *test unit*. In the lines cited in the Office Action, Laham discloses an MSC, not an MSC *test unit*. Thus, since neither Kiukkonen nor Laham disclose all of the limitations of claim 13, the combination of Kiukkonen and Laham cannot disclose all of the limitations of claim 13.

If any other fees are associated with the entering and consideration of this amendment, please charge such fees to our Deposit Account 50-2882.

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Applicant respectfully requests an interview with the Examiner to present more evidence of the unique attributes of the present invention in person. As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Respectfully submitted,

Date: 15 September 2006



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